

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0080P
Individual Income Tax
Calendar Years 1999, 2000, and 2001**

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ISSUE(S)

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

II. **Tax Administration** – Interest

Authority: IC 6-8.1-10.1

Taxpayer protests the interest assessed.

STATEMENT OF FACTS

The Indiana Department of Revenue received W-2G information that the taxpayer had won money in riverboat gaming during 1999 and 2000. The Department billed the taxpayer on gambling income from Indiana plus penalty and interest. The taxpayer filed IT-40PNR returns. Taxpayer, in a letter dated February 7, 2003, requested an abatement of the penalty and interest assessed.

Taxpayer filed its returns late with a tax balance due of \$862.92, \$886.38, and \$113.22 respectively for 1999, 2000, and 2001 after the Department advised her of her failure to file.

I. **Tax Administration** – Penalty

DISCUSSION

Taxpayer, an Ohio full year resident, states that the casino was instructed to withhold the necessary tax and withheld it for Federal and the State of Ohio instead of the State of Indiana. Taxpayer further states it was not her intent not to pay her tax liability and the instructions for

Form IT-40PNR does not specifically state that gambling income is excluded from the reciprocal agreement that exists between the State of Indiana and the State of Ohio.

Taxpayer filed Indiana returns upon notification that she should have reported Indiana gambling income to Indiana. Taxpayer has applied for a refund in her state of residence and is awaiting receipt.

Taxpayer could not have known that tax was due to the state of Indiana because she was not a resident of the State and the Riverboat did not correctly withhold tax.

FINDING

Taxpayer's protest is sustained.

II. Tax Administration – Interest

DISCUSSION

Taxpayer requests a waiver of the interest assessed, however, the Department has no authority to waive interest.

Taxpayer's protest is denied.

CONCLUSION

Taxpayer's protest is sustained for Issue I. and denied for Issue II.